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29 AUG 2007

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In re Application of	:	
RICHARD KABZINSKI et al.	:	
Application No.: 10/551,674	:	
PCT No.: PCT/AU04/00387	:	DECISION ON
Int. Filing Date: 29 March 2004	:	
Priority Date: 28 March 2003	:	RENEWED PETITION
Attorney's Docket No.: 60136-0011	:	
For: Security System and Method for Computer Operating Systems	:	UNDER 37 CFR 1.47(a)

This is in response to the "Request For Reconsideration Of Petition," filed 01 August 2007, to permit the applicants to file the above-captioned application on behalf of the non-signing inventor, Russell Powers.

BACKGROUND

On 29 March 2004, applicants filed international application PCT/AU04/00387, claiming a priority date of 28 March 2003. The thirty-month deadline for paying the basic national fee in the United States expired at midnight on 28 September 2005.

On 28 September 2005, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a copy of the international application, the requisite priority document, a preliminary amendment and, a surcharge for late filing of the oath or declaration. An oath or declaration was not submitted.

On 23 May 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/905) indicating that an oath or declaration must be filed. The notification set a two-month time limit in which to respond.

On 03 October 2006 applicant filed a petition under 37 CFR 1.47(a) accompanied by a petition fee, a three-month extension fee, an oath executed by inventors Richard Kabzinski and Michael A. Hearn and a declaration by Mr. Christopher Palermo.

On 01 June 2007, the Office mailed "Decision on Petition under 37 CFR 1.47(a)" dismissing applicants' petition without prejudice. Specifically, the Decision found that a statement from a person having first-hand knowledge of presenting the complete application papers to non-signing inventor was required.

On 01 August 2007, applicants filed the instant "Request For Reconsideration Of Petition," including, a declaration from Mr. Steven Starkie and a copy of the Toll Priority customer receipt (a courier service of Toll Transport Pty Ltd of Australia).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) a statement of the last known address of the missing inventor, (3) an oath or declaration by each applicant on his or her own behalf and on behalf of the non-signing joint inventor, and (4) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort.

As noted in the "Decision on Petition Under 37 CFR 1.47(a)," mailed 01 June 2007, items (1)-(3) have been satisfied.

With regard to item (4), applicants have provided evidence to show that non-signing inventor Russell Powers has been presented with a complete copy of the application papers (specification, including claims, drawings and, oath or declaration). The declaration of Mr. Steven Starkie (a person having first-hand knowledge of presenting the complete application papers to non-signing inventor Russell Powers), and the Toll Priority customer receipt (see Exhibits 1 and 2), together, show that a complete copy of the application papers were presented to non-signing inventor Russell Powers. Furthermore, the results of an Internet address search (www.whitepages.com.au), showing that the address of Mr. Russell Powers is the same as the last known address, together with the declaration of Mr. Steven Starkie and the Toll Priority customer receipt, reinforces the evidence that Mr. Russell Powers refuses to execute the application. Hence, item (4) has been satisfied.

CONCLUSION

Applicants' petition to permit the applicants to file the above-captioned application on behalf of the non-signing inventor, Russell Powers, is **GRANTED**.

This application has an International Filing Date of 29 March 2004 and a date under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) of 03 October 2006.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.



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Page 1